

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY HASSETT, JOHN DOE, WILLIAM
JOHNSON, a/k/a GOLF SHOES JOHNSON, and
JOHN FRUCIANO,

UNPUBLISHED
November 10, 2005

Plaintiffs-Appellants,

v

ARCHDIOCESE OF DETROIT,

No. 261483
Wayne Circuit Court
LC No. 04-414439-NZ

Defendant-Appellee.

WHITE, J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's conclusion that plaintiffs' civil conspiracy claims were properly dismissed.

The majority concludes that this case presents "nearly identical circumstances"¹ to *Doe v Archdiocese of Detroit*, 264 Mich App 632; 692 NW2d 398 (2004). I do not join in that conclusion.

While there is, no doubt, some self-evident element of truth in the majority's assessment, in the sense that the abuse alleged to have been suffered by the *Doe* plaintiff, these plaintiffs, and plaintiffs across the country, all involved Catholic clergy under the same papal governance, doctrines, and decrees, cases are decided based upon the pleadings, submissions and arguments, and supporting evidence proffered by the individual parties in the individual cases. The *Doe* Court decided *Doe* in the context of the *Doe* plaintiff's litigation of his claims in that case. Reading *Doe* in that context, I conclude that the instant plaintiffs raise claims, and provide factual support for those claims, that distinguish this case from *Doe*.

In contrast to *Doe*, plaintiffs here allege a civil conspiracy, and assert fraudulent concealment regarding that conspiracy. Plaintiffs submitted the affidavit of expert witness Father Thomas P. Doyle, which describes a 1962 document setting forth revised special

¹ The majority states at page two, "Plaintiffs have failed to persuade us that we can distinguish this case from *Doe*, in which we rejected this same tolling theory *under nearly identical circumstances*." (Emphasis added.)

procedural norms for processing cases of solicitation of sex during the sacrament of confession. Father Doyle's affidavit asserts that this document governed the handling of abuse allegations until 2001, that the document imposed an exceptional degree of confidentiality on the persons involved in the processing of cases, and that the document itself was subject to unusual secrecy.²

² Father Doyle's affidavit included the following:

HISTORICAL CONTEXT OF CLERGY SEXUAL ABUSE OF MINORS /
NOTICE OF THE CATHOLIC CHURCH AND ITS INSTITUTIONAL
RESPONSE THERETO:

CONCEALMENT

* * *

14. After the promulgation of the first Code of Canon Law in 1917, the Vatican issued no legislation about solicitation or any other form of clergy sexual crime until 1922 when the Vatican Congregation for the Holy Office issued a document outlining procedures for handling cases of solicitation for sex in the sacrament of confession in a confidential manner (June 8, 1922). This document was followed by another in 1962 when Pope John XXIII approved the publication of revised special procedural norms for processing cases of solicitation of sex during the sacrament of confession. The document is entitled *Crimen Sollicitationis*. Like its predecessor document mentioned above but unlike all known papal legislation on this subject issued prior to 1922, this document was buried in the deepest secrecy. Although it was promulgated in the ordinary manner and then printed and distributed by the Vatican press, it was never publicized in the official Vatican legal bulletin, the Acta Apostolicae Sedis. The document was sent to all bishops in the world. The main section of the document is preceded by an order whereby the document is to be kept in the secret archives and not published nor commented upon by anyone. No explicit reason was given for this unusual secrecy nor is any justification given for the document's creation or dissemination or some of the surprising changes therein.

15. Popes and various regional bishops have issued disciplinary laws against solicitation beginning in 1561 and extending to 2001 (Papal laws were specifically promulgated in 1561, 1622, 1741, 1917, 1922, 1962, 1983 and 2001.) The 1962 document introduced several significant elements, including an exceptional degree of confidentiality imposed on the document itself and the persons involved in processing cases. Compared to previous papal documentation confronting clergy sexual abuse this document contains several significant changes that reveal the church's policy on clergy sexual crimes. The 1962 document was in force throughout the Catholic Church from 1962 until 2001. . . .

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Relevancy of the 1962 document to the current clergy abuse crisis:

16. The 1922 document containing revised procedural regulations for processing certain clergy sexual crimes was distributed to all Catholic Bishops but were retained under an order of secrecy. Proof of this document's existence is based on references to it found in diocesan files as well as references in articles found in professional Canon Law journals. Similarly the 1962 document was largely unknown to anyone outside of the Catholic hierarchy except for a few canon lawyers until reference to it was included in a 2001 document from the Congregation for the Doctrine of the Faith on sex crimes. This letter from Cardinal Ratzinger, head of the Congregation, was sent in 2001 to all bishops from the Congregation for the Doctrine of the Faith on more grave crimes reserved for consideration to that same Vatican office. The 1962 document was issued prior to the promulgation of the revised Code of Canon law in 1983 and therefore would, under ordinary circumstances, have lost its legal force. The Ratzinger letter, however, clearly indicates that it had been in force until May of 2001.

17. The 1962 document, *Crimen Sollicitationis*, is significant in this case because it reflects the church's concerted effort to maintain the highest degree of secrecy and strictest degree of scrutiny about the worst sexual crimes perpetrated by clerics. . . .

18. Since the archives of the Congregation of the Holy Office, now known as the Congregation for the Doctrine of the Faith, are closed to outside scrutiny, it is impossible to determine the number of cases referred to it between 1962 and the present. The other factor impeding a study of cases is the prohibition of the local dioceses from ever revealing the very existence of pertinent clergy sexual abuse cases, much less the relevant facts.

19. Prior to 1984 there had been isolated cases of clergy who were criminally prosecuted for sexual abuse of minors. A search of news media records has revealed two such cases: Fr. Bruce MacArthur, convicted of rape in Texas in 1979 and Fr. Mel Balthasar convicted of child sexual abuse in Idaho in 1984. There may have been others but such cases did not have significant media coverage. There are no known cases of civil suits against Catholic dioceses or archdioceses based on clergy sexual abuse of minors prior to the suit brought against the Diocese of Lafayette, Louisiana in 1984. There are several reasons why there were no civil suits. The more significant reasons are:

- a. Catholics were forbidden by the Code of Canon Law in force between 1917 and 1983, from bringing civil law suits against clerics (priests or bishops). This law specifically enjoined civil suits against bishops under pain of excommunication.

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b. Catholics had been officially taught that priests took the place of Jesus Christ and because of their exalted position, any word or action that was negative, critical or injurious to a priest and especially a bishop was grievously sinful and always resulted in disfavor with God.

c. Catholics believed that it was virtually impossible to sue the institutional church, priests or bishops because such suits would be given no recognition by law enforcement or judicial officials.

d. All information and files retained by church officials about any sexual activities of clergy, whether legal or illegal, was impossible to obtain. The existence of such information was restricted to the bishop and one or two of his closest advisors. Although Canon Law required that such information be retained in the secret archives of the diocese, in most instances, this information was not kept there but was retained in an even more secret and secure location.

20. The public exposure of long-standing clergy sexual abuse of youth that began in the mid-eighties was mistakenly believed by many outside the hierarchy to be a new phenomenon and an exclusive “American problem”, which of course it is not. Despite a series of high profile cases from around the world the Vatican issued no disciplinary documents specifically dealing with clergy sexual abuse until 2001.

21. Although the present pope has made several statements to groups of bishops and at two youth day celebrations about clergy sexual abuse between 1993 and present, this 2001 document was the first attempt by the Vatican to take concrete steps to contain the problem. The document, which is a set of special procedural norms, is not exclusively about sex abuse although that is the predominant theme. It is about the processing of certain clergy crimes considered by the Vatican authorities to be so serious that prosecution of them is reserved to the Vatican itself.

22. There has been a distinct pattern of response by the institutional church and its hierarchy to reports of clergy sexual abuse. This pattern is well documented and remained the norm at least until the widespread revelations of 2002. The pattern has several distinctive levels:

a) Denial of the accusation.

b) Minimization of the abuse with a focus on any positive aspects of the perpetrator’s life instead of concern for the harm done to the victim,

c) Blame-shifting in an attempt to place blame anywhere but on the institutional church, its clerical establishment or one or the other aspect of the ecclesial culture and

(continued...)

Unlike the majority, I do not read the *Doe* majority's discussion at page 649 to be dispositive of the civil conspiracy claims asserted here. I would reverse the circuit court's dismissal of plaintiffs' conspiracy claims.

/s/ Helene N. White

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- d) De-valuation of the victims, their families or their supporters.
- e) Denied the existence of, or hidden documentary evidence of reports of sexual abuse

* * *

24. The intense public pressure brought on the hierarchy from early in 2002 caused US Catholic bishops to propose a policy that ruled out return to ministry for such clerics. This policy, with its widely discussed "Zero Tolerance" clause, went into effect in 2002. Prior to this time the standard procedure was to transfer clerics with little or no medical/psychological intervention. If such clerics were provided treatment, then they often were placed back in ministry at the completion of residential care with minimal or no supervision.